

Senator Cooper offered the following amendment: Amend by striking out on page 2, line 2, "separate tract or parcel of," and inserting the word "persons" in lieu thereof. Lost by the following vote:

YEAS—3.		
Cooper,	Houston,	Lair.
NAYS—22.		
Buchanan of Wood,	Homan,	Shannon,
Buchanan of Grimes	Lightfoot,	Stewart,
Burges,	Martin of Cooke,	Stubbs,
Davenport,	Moore,	Swain,
Gooch,	Patton,	Tilson,
Harris,	Powers,	Weatherred,
Henderson,	Rainey,	Wynne.
Hightower,		

NOT VOTING—3.  
Burton, Lane, Ross.

The bill was then passed by the following vote:

YEAS—23.		
Buchanan of Grimes	Lair,	Shannon,
Buchanan of Wood,	Lane,	Stewart,
Burges,	Lightfoot,	Stubbs,
Davenport,	Moore,	Swain,
Gooch,	Patton,	Tilson,
Harris,	Powers,	Weatherred,
Homan,	Rainey,	Wynne.
Houston,	Ross,	

NAYS.

Cooper.

NOT VOTING—4.  
Burton, Henderson, Hightower,  
Martin of Cooke.

Senator Martin of Cooke explained to the Senate that he had a direct interest in the passage of the bill, and asked to be excused. Granted.

On motion of Senator Gooch the Senate agreed to reconsider the vote by which 100 copies of the Governor's message was ordered printed.

Senator Gooch offered the following substitute for the motion under consideration:

That the Printing Committee contract for the printing of 1000 copies extra of the Senate Journal containing the Governor's message and accompanying papers.

Senator Buchanan of Grimes moved to amend the substitute by striking out "1000" and inserting "500."

Senator Gooch raised the point of order that as his amendment contained the larger number it should have precedence. Sustained, and his substitute was adopted by the following vote:

YEAS—15.		
Buchanan of Wood,	Harris,	Patton,
Burges,	Henderson,	Stubbs,
Cooper,	Hightower,	Swain,
Davenport,	Homan,	Weatherred,
Gooch,	Lane,	Wynne.

NAYS—11.

Buchanan of Grimes	Martin of Cooke,	Shannon,
Burton,	Moore,	Stewart,
Lair,	Rainey,	Tilson.
Lightfoot,	Ross,	

NOT VOTING—2.

Houston, Powers.

Senator Buchanan of Wood, by leave, introduced a bill entitled "An act to amend articles 4746, 4747, 4748 of the Revised Statutes of the State of Texas," adopted at the regular session of the Sixteenth Legislature." Referred to Committee on Finance.

Senator Lane, by leave, introduced a bill entitled "An act to validate certain acts of notaries public who have used seals with the word 'Texas' engraved between the points of the star thereon instead of around the margin thereof." Referred to Judiciary Committee No. 1.

Senator Buchanan of Grimes, chairman of Committee on Engrossed Bills, submitted the following report:

COMMITTEE ROOM,  
AUSTIN, January 26, 1881.

Hon. L. J. Storey, President of the Senate:

Your Committee on Engrossed Bills have examined Senate bill No. 23, being "An act to amend article 2266, chapter 4, title 38, of 'an act to adopt and establish the Revised Civil Statutes of the State of Texas,' passed by the Sixteenth Legislature of Texas," and find the same correctly engrossed.

Senate bill No. 31, entitled an act to amend article 1547 of the Revised Civil Statutes, passed February 21, 1879," was taken up, read second time, and ordered engrossed.

(Senator Houston in the chair.)

Senate Bill No. 32, entitled "An act regulating the removal of the disabilities of minors," was taken up and read second time.

Committee amendments adopted and bill ordered engrossed.

(President in the chair.)

Senate Bill No. 40, entitled "An act to amend article 605, of an act entitled 'an act to adopt and establish a Penal Code and Code of Criminal procedure for the State of Texas,' passed by the Sixteenth Legislature," was taken up.

Pending its consideration, on motion of Senator Cooper, Senate adjourned till 10 o'clock to-morrow morning.

#### FIFTEENTH DAY.

SENATE CHAMBER,  
AUSTIN, January 27, 1881. }

The Senate met pursuant to adjournment, Lieutenant-Governor Storey in the chair.

Roll called—quorum present.

Prayer by Rev. Mr. Cross.

On motion of Senator Burton, the reading of the journal of yesterday was dispensed with, and the same adopted.

Senator Homan suggested the correction of the journal of yesterday with regard to the confirmation of A. W. Spaight for Commissioner of Insurance, Statistics and History, which correction was accordingly made.

Senator Stewart presented a memorial signed by citizens of Harris county, complaining that persons incurring fines for misdemeanors, and being too poor to pay them, are not allowed, when satisfying those fines by manual labor, under the direction of the commissioners' court, sufficient per diem pay for such labor, and recommending that the per diem pay of such laborers be increased to \$2, and the punishment of county convicts for insubordination or refusal to labor be prohibited. Referred to Judiciary Committee No. 2.

Senator Henderson presented a petition signed by farmers, stockraisers and householders of Brazos county, asking the Legislature to amend article 748 of the Penal Code, so as to make the theft of any sheep, hog or goat, under the value of twenty dollars, a felony, and punishable by confinement in the penitentiary not less than one and not more than two years. Referred to Judiciary Committee No. 2.

Senator Powers presented a petition signed by citizens and tax-payers of Nueces and Duval counties, praying for an appropriation sufficient to increase the command of Captain T. L. Oglesby, now in the public service, from its present strength of twenty-five men to sixty, and defray the expenses of the same, to be employed in suppression of lawlessness and crime upon the frontier. Referred to Committee on Frontier Protection.

Senator Patton, chairman of Committee on State Affairs, submitted the following report:

COMMITTEE ROOM,  
AUSTIN, January 26, 1881.

Hon. L. J. Storey, President of the Senate:

Your Committee on State Affairs have had under consideration Senate Joint Resolution No. 19, requiring the employment of female clerks, and a majority of said committee direct me to report

the same back to the Senate with the recommendation that it do pass.

PATTON, Chairman.

Bill read first time.

Senator Stewart, chairman of Judiciary Committee No. 2, submitted the following reports:

COMMITTEE ROOM,  
AUSTIN, January 26, 1881.

Hon. L. J. Storey, President of the Senate:

Your Judiciary Committee No. 2, to whom was referred Senate Bill No. 41, entitled "An act to amend article 800, of the Code of Criminal Procedure, beg leave to report that they have duly considered the same, and I am instructed to report the same back to the Senate, with the accompanying substitute therefor, with the recommendation that the substitute be adopted and passed; for the reason that the law as it now exists makes no provision for the commutation of sentences where the same defendant has been convicted at different terms of the same court; and because the law, as it now is, furnishes no mode of procedure to establish the identity of the defendant in commutative sentences where that question should be made; which defects the substitute covers.

STEWART, Chairman.

Bill read first time.

COMMITTEE ROOM,  
AUSTIN, January 26, 1881.

Hon. L. J. Storey, President of the Senate:

Your Committee on Judiciary No. 2, to whom was referred Senate bill No. 28, entitled "An act to amend article 500 of the Code of Criminal Procedure," beg leave to report that they have had the same under consideration, and I am instructed to report the same back to the Senate with the accompanying substitute and amendments to said substitute, and recommend that said substitute and amendments be adopted and passed, for the reason that the law, on the subject of continuances in criminal cases does not require the defendant to swear to the truth of the facts on which he proposes to obtain a continuance of his case, only requiring him to state that he expects to prove such facts by the absent witness. Under its provisions an immunity is granted to defendants who would perjure themselves in order to work a continuance of their causes. By the provisions of the substitute, as amended, the defendant is required to swear to the facts, if within his knowledge; if not within his knowledge, he is required to state the source of his information, and that he believes it to be true. In the opinion of the committee, under the proposed substitute, as amended, the rights of every defendant who desires the continuance of his case, on a bona fide defense, will be amply protected, while a safeguard is furnished against those who would commit willful perjury in order to continue their cases.

STEWART, Chairman.

Bill, with substitute, read first time.

COMMITTEE ROOM,  
AUSTIN, January 27, 1881.

Hon. L. J. Storey, President of the Senate:

Your Judiciary Committee No. 2 beg leave to report that they have considered Senate bill No. 56, to be entitled "An act to make penal any disclosures of proceedings or divulgence of secrets of the grand jury," and I am instructed by the committee to report the same back to the Senate, with the annexed amendment, and, with said amendment, to recommend that the bill do pass.

STEWART, Chairman.

#### AMENDMENT.

After the word "not" in eighteenth line, add the words "unless it be called for as evidence in a judicial proceeding where the truth or falsity of evidence given before such grand jury is under investigation.

STEWART, Chairman.

Bill, with amendment, read first time.

COMMITTEE ROOM,  
AUSTIN, January 27, 1881.

Hon. L. J. Storey, President of the Senate:

Your Judiciary Committee No. 2 beg leave to report that they have duly considered Senate bill No. 54, to be entitled "An act to amend article 1054, title 15, chapter 2 of the Code of Criminal Procedure," and I am instructed by the committee to report said bill back to the Senate, with the recommendation that it do pass.

STEWART, Chairman.

Bill read first time.

COMMITTEE ROOM,  
AUSTIN, January 27, 1881.

Hon. L. J. Storey, President of the Senate:

Your Judiciary Committee No. 2 have duly considered House bill No. 11, to be entitled "An act to amend article 435 of the Code of

Criminal Procedure, providing for the transfer of indictments from the district courts to courts having jurisdiction thereof," and I am instructed by the committee to report the bill back to the Senate, with the recommendation that it do pass.

STEWART, Chairman.

Bill read first time.

Senator Buchanan of Grimes, chairman of Committee on Engrossed Bills, submitted the following report:

COMMITTEE ROOM,  
AUSTIN, January 27, 1881.

Hon. L. J. Storey, President of the Senate:

Your Committee on Engrossed Bills have examined Senate bill No. 31, being "An act to amend article 1547 of the Revised Civil Statutes, passed February 21, 1879;" and Senate bill No. 32, being "An act to regulate the removal of the disabilities of minors;" and find said bills correctly engrossed.

BUCHANAN of Grimes, Chairman.

Senator Homan, by leave presented a memorial signed by Adjutant-General J. B. Jones, representing that he was justly entitled to a balance of \$540, due him for services rendered as Adjutant-General from January 28, 1879, to August 3, 1879, and asking an appropriation therefor. Referred to Committee on Finance.

A message was received from his Excellency the Governor which reads as follows:

EXECUTIVE OFFICE, STATE OF TEXAS,  
AUSTIN, January 26, 1881.

To the Honorable Senate and House of Representatives, in the Legislature Assembled:

Ever since the adoption of the present Constitution, there has been a very general dissatisfaction in regard to the

#### ORGANIZATION OF THE JUDICIAL DEPARTMENT.

which has induced the effort for its amendment by the Legislature at each regular session since that time. The most prominent objection to it is, that it provides for too many courts, and too great a division of jurisdiction, in such manner as not to leave sufficient discretion for legislation in adopting it to suit the wants of the country. In view of the expectation that this Legislature may also endeavor to provide for some constitutional amendment of it, I respectfully submit the result of my conclusions, in regard to it. In devising a system of courts, it is well to consider how they grew up in England (from which country we derive our laws mainly), to meet the wants of the country gradually without any statutes enacting a general plan for them. There in the course of time the four courts of record, the Common Pleas, the Kings Bench, the Court of Exchequer, and the Court of Chancery, embraced a general jurisdiction, commensurate with the great body of the subjects of litigation, and constituted the center of their systems, with powers vested in some of them to regulate or correct errors in the proceedings in inferior courts and tribunals, and their adjudications were subject in some shape or other, to an appeal to a higher tribunal of last resort, for the correction of errors. The same principle was transplanted into the judicial system of most of the States, with such changes in the organization as were necessary to adapt them to the convenience and wants of the country. Profiting thus by the experience of the past, our district court should be a court of general jurisdiction, covering the whole ground of judicial proceedings so fully, that there could never be a want of jurisdiction in it claimed, except where it could be shown by express limitation, or direction that it was certainly given to another court. It should be given a supervising control over all inferior courts; and tribunals wherein rights are administered, in such manner as should be regulated by law. Its adjudications should be subject to appeal to a court of last resort, under such regulations and with such exception as should be prescribed by law. The jurisdiction of the justices' court should be small and plainly defined, both in civil and criminal matters, and there should be no appeal from it, except by certiorari, or some other writ, granted by the district judge upon a showing of injustice in the decision, and the determination thereon by the district court should be final, except under such regulations and in such cases, as should be prescribed by law. This provision is to prevent the oppression of the weak by the strong by protracted litigation, and to put a termination to litigation about small matters. Instead of an appeal in all cases being an advantage to one whose business transactions are small, it is generally the contrary; especially where his opponent is able thereby to carry him up through all of the courts; by which he will be a loser though successful. The probate court should have a general jurisdiction, which should be entirely under such regulations as might be prescribed by law. The Supreme Court is not, as it is generally regarded, the great court of the country, though it is the one that should be filled by the greatest ex-

perience, learning and wisdom. Because it is itself, a mere supervising court, for the correction of such errors as may occur in the district court, when the cases are tried, and given shape to. The district court is the great and important court of the country, being as it were the great reservoir of public justice, and the active arm of the government in determining rights, and redressing wrongs—the real center of the system of the judicial organization.

A judicial department, organized in accordance with these views, would be simple in its structure, and harmonious in the relation of its parts, and gradations of jurisdiction. What further would be needed would be to give it force and efficiency, so as to promptly dispose of the litigation, both civil and criminal. To accomplish that, the Legislature should be given large powers to enlarge or lop off, so as to meet any emergency, and not be bound up by the limitations of the Constitution, as it has been. An illustration of what is meant here may be drawn from the history of our Supreme Court, which has for the last twenty-five years been unable to dispose of the business before it, to the great prejudice of litigants; and our system has been afflicted with such a want of pliability, as that the Legislature has never yet applied adequate means to remedy the evil.

#### THE SUPREME COURT.

A Supreme Court, organized with a Chief Justice and nine Associate Justices, with power to make three sections, each alternately to be presided over by the Chief Justice, in the trial of causes both civil and criminal, would not now more than be able to dispose of the current business, and bring up the business that has accumulated for years back in that court. And if it were so organized, a provision might well be made in connection with it, giving the Legislature power to reduce the number of justices on said court, when the current business could be disposed of with a smaller number. Having served on that bench four times, with four sets of judges, in part at least, I trust it will not be deemed improper for me to state a few facts in regard to the labor performed by it, under its present and past organization. The judges have labored during the day and much of the night for nine months in the year. Their opinions have been delivered under a pressure, for want of time, in the effort to dispose of the business, and the wonder is, that they are as creditable to the court, as they are regarded to be. The health of a judge of said court cannot generally, as shown by experience, last longer than ten to fifteen years, under the continued strain of compressed mental effort. It is not right for the government to require of its public servants, having in charge such grave and important interests as those judges do, such an amount of labor, and consequent sacrifice of health and life as has been done in the past, and at present. Nor is it to the interest of the State to do it, for the reason, if there was no other, that the reputation of its court and the wisdom and weight of their decisions might be increased, to the credit of the State, by giving the judges more time, and better opportunities to perform the duties imposed on them. For these, as well as other reasons, that might be given, the number of judges should be increased. The power of dividing into sections will enable them to dispatch the business more rapidly, and at the same time, its organization may be so arranged as to call into action the whole court, when there is a dissent in any section of it, and in certain classes of cases, and thereby preserve uniformity of decision, and unity as one court of last resort.

#### DISTRICT COURTS

should be so organized over the State as to be reasonably certain to dispose of the business at each term, and its sessions should be made sufficiently frequent as to clear the jail of criminals, as nearly as practicable, which burdens the counties with a very great expense, as will be exhibited in the tabular statement, that I will submit to you. It would be well also in order to accomplish that object to make a constitutional provision for extending the term of the court in any county, after the regular district judge had to leave it to attend another court, by the appointment of a special judge to take his place, and continue the term until the business should be disposed of. The same provision might be made to apply to the cases, in which the judge was disqualified, after he had disposed of all those in which he was not disqualified. The frequent changes of judges by the election of lawyers, who have numerous cases on the dockets of their districts, have made it necessary to make frequent appointments of special judges, and what I propose would be a mere extension of the power given to the special judge to go on, and finish the business of the court, when the regular judge had to leave, or was absent from any other cause. It is hardly necessary for me to add a word as to the necessity of remedying the delays of the law, as far as practicable.

In the

#### EXECUTION OF THE CRIMINAL LAWS

the first great necessity is the procurement of able and efficient prosecuting attorneys to represent the State. They have to meet usually the best lawyers at the bar, often without aid of any sort, while their opponents may have all the aid from friends of the

accused that they need. Judges ought not to help district attorneys in prosecutions, and ought not to be tempted to do it from a sense of justice aroused by witnessing the weakness of the prosecution. It has so long been the habit of the country to elect young lawyers, to these offices, to give them a start in their profession, that it would now perhaps, under the present system, be regarded as an unfit intrusion, for a lawyer of experience and ability to offer his services to the State as a prosecuting officer. Yet certainly the State should have able prosecutors,—equal at least to the judges on the district bench. Persons charged with crime must be allowed to make their defense by employing able lawyers, if they can do so, and if they are too poor to employ lawyers, the court ought, as it often does, appoint able lawyers to defend them. It has got to be the case, that the worse the offense is, the greater the means and efforts are to clear the prisoner, and the greater the merit and fame awarded to the lawyer for doing it. The inexperienced representative of the State is overwhelmed by the superior ability of his experienced antagonist, or circumvented by his adroit management, and the criminal goes unpunished, and the laws are outraged, simply because he, or his friends have money enough to employ an able lawyer, and the State employs an inexperienced one, whose ability is not practically matured, however sprightly or talented he may be. I most respectfully submit that this thing has gone on long enough. Ability must be met by ability at the bar, and the State is certainly as able to pay for it as individuals are. There is no use to withhold the truth, that as our criminal courts are now carried on generally, with an occasional exception, the ablest and most experienced lawyers are seen standing within the court to defend criminals, and apparently to prevent the laws from being enforced to punish them. This can only be obviated by the State employing able and efficient counsel on its side.

I therefore respectfully recommend that provision be made for the appointment and removal of district attorneys in every district in the State, and that they shall be paid by a salary, the same as the district judge, and be allowed no fees except commissions in forfeitures, and other collections, to be regulated by law. I do not believe that a district attorney should be interested, even in the amount of the fees now allowed to secure a conviction, but rather he should in criminal matters be placed, just as a judge is, on the high ground of impartiality between the State and the accused, in the enforcement of the law for the benefit of the State, and not to make money out of it for himself. Under such circumstances, his prosecutions might be expected to be more effective for the State, and more just to the accused; and able and experienced lawyers would accept the position, if tendered to them. His being appointed would also tend to produce the same results, and would make him independent of any local influences or prejudices, calculated possibly to bias his judgment or action. There are other reasons why the office should not be elective. First, he is not a district officer, in any proper sense of that term, but a State officer, representing the whole State, and not only the district for which he may be appointed. Second, he is, from the nature of his duties and powers, peculiarly the executive officer in the administration of the laws in the courts; notwithstanding he is placed in the judicial department in our Constitution, and he should in some way be amenable to the higher executive officers, in regard to his action. As it is now, every district and county attorney in the State has absolute control, according to his own judgment or pleasure, with a slight exception, in regard to prosecutions and suits, for or against the State, and may assert the right so to control them with impunity. Any deference to the direction of the Attorney-General, or other executive officer, is merely from courtesy, or moral obligation, in regard to the bringing or not bringing prosecutions and suits, and in conducting the same.

I trust I may be excused for dwelling on this subject, as our experience has long since shown the inadequacy of the means used for the execution of the criminal laws, notwithstanding the great expense and time consumed in holding courts, and the attendance of witnesses; which is made manifest by the sort of convicts we have in the penitentiary, over twenty-one hundred in number, and all of them, with comparatively few exceptions, being either poor boys, or penniless or friendless men.

The first step in the road of improvement is to secure able and efficient prosecuting attorneys to represent the State, without which all else will be, as it often has been, a sad failure, when the indirect power of money, or influence, or prejudice or superior ability is brought to bear in rescuing prisoners from just punishment for their crimes.

Whether there is an amendment of the Constitution on this subject or not, I respectfully recommend, that a law be passed, authorizing the election of a district attorney, in each one of the districts of the State. It was authorized in a number of districts by the Sixteenth Legislature, and there was thereby a great improvement in the execution of the criminal laws in nearly every one of them.



The next most desirable improvement in the execution of the criminal laws, would be

TO PREVENT THE OPPORTUNITY OF PACKING JURIES, either in favor of, or against the prisoner. This may be a difficult thing to accomplish, but the obvious occurrence of it occasionally should induce the effort to do it. The number of challenges, allowed to the State, and to the prisoner by law now, is used to exhaust the drawn jurors summoned by the special venire, and then a selection is, or may be made from the by-standers. It is useless to explain further to those, who have witnessed trials in important cases, where there was either prevalent sympathy, or favor for, or prejudice against the prisoner.

Another improvement in the execution of the criminal laws very much needed, is the more prompt arrest of persons, who commit offences, especially those of a high grade. The officers, upon whom the law imposes an imperative obligation to make arrests, or take the necessary steps to have it done, are magistrates, and peace officers when offences are committed in their presence, and peace officers, where they have good reason to believe there has been a violation of the penal law. It is very obvious that if there was a public opinion and determination to have all of the penal laws strictly enforced, sufficiently strong to require this obligation to be performed rigidly, there would be a very great improvement in the execution of the criminal laws. Almost every person is closely engaged in their ordinary pursuits in attention to business, and those having the largest interests, and who should have the most concern in the proper execution of the laws for the good of society, are usually the very last persons, whose services or active influence can be obtained in aid or encouragement of said officers. They should be made to pay others to do it, who can be procured, and enlisted by said officers. In view of this state of things, it has occurred to me to suggest for the consideration of the Legislature, the propriety of authorizing the sheriff of each county to provide himself with a body of bailiffs sworn in as peace officers, limited in number according to the population and wealth of the county, to be appointed by the county commissioner's court, upon recommendation of the sheriff and thereby made deputies, to be prepared to promptly act in aid of the sheriff, when necessary to make prompt arrests, and to pursue escaping offenders, just as soon as offences are committed, and to ferret out secret offences, especially those of a high grade, such as felonious homicide, robbery, burglary and arson, to be paid when called into service by the sheriff, an amount fixed by law as other officers, upon approval by the county commissioners' court, one half by the county, and the other half by the State. This might be made to save a large expense, which the State now incurs, in giving rewards upon requisitions for the return of escaped criminals, who have fled to other States and Territories. This prompt arrest of offenders, and the full preparation for it would act as a discouragement and prevention of crime; because it is well known, that the facility of escapes in a sparsely settled country, is a great inducement to commit offences. My object, in pressing this matter upon the attention of the Legislature, is not so much to urge any plan of my own, as to enlist the effort to accomplish the object so desirable, in some practical way. The wisdom of the Legislature, and the observation and experience locally of the respective members may secure the adoption of other measures, conducive to the same end.

I respectfully recommend to the favorable consideration of the Legislature the recommendations on this subject of the Hon. George McCormick, in his report as Attorney General, that has been submitted to the Legislature.

#### THE EDUCATIONAL INTERESTS

of this State, in all of its grades from the highest to the lowest, should be regulated and adapted to the wants of the people in every condition of life, should have in all of its parts and branches a well defined consistency, and relation of one to the other in the different gradations, and should all be under the same supervisory government, and control, to the extent, that it is fostered by the State government, not including private institutions of learning.

The natural division in the gradation of schools, in order to meet the wants of the people, is into three steps or degrees of education, the common schools for the millions, the academies for the thousands and the college or university for the hundreds. So it has been, and ever will be, and the encouragement, and provision for each degree are equally essential, in the effort to elevate society to a high standard of civilization. Attention to either one, to the neglect of any other, will necessarily produce disharmony in its natural order as a system, and a deficiency in the attainment of the desirable objects as an entirety. Being as a whole, placed under the same supervisory control, a curriculum, or course of study could and should be prescribed for and enforced in each grade, so as to be in harmony in, and throughout the different grades established, and so as not to interfere and conflict with one another, in the whole course of education, fostered by the State. Fortunately Texas is now in condition

to initiate measures, that will eventuate in this grand result. We have the means, as you will see exhibited, and explained in the report of the Board of Education, to commence

#### THE INSTITUTION OF A UNIVERSITY.

That, under the Constitution, will require the Legislature to submit the question of its locality to the voters of the State, which I respectfully recommend as proper to be done during the present session. It is much to be desired that it shall be located at the seat of government, at Austin, where forty acres of land were set apart for it, in a most beautiful situation, in laying off the city, indicating thereby the voice of the founders of our institutions, as to where it should be located. It would be here, where the members of the Legislature at every session could conveniently give it their attention and encouragement, and here would be congregated the youths of the country to imbibe common ideas, acquire a love of our State, its history and institutions; and in whatever positions in life they might afterwards be placed, they would be thereby predisposed to think and act on a common design, for the prosperity and glory of their own State. It should be open for females, as well as males, qualified to enter it; and such should be the rule in all of our schools, of whatever grade.

#### ACADEMIES

for a higher degree of education than it is practicable to be furnished in the common schools, and also to prepare persons to enter college, should be provided in every county in the State, under the immediate control of the local authorities, that might be established for that purpose. This could and should be done, by restoring to the counties the four leagues of land, or the proceeds thereof if sold, which were originally appropriated to each of them by an act of the Congress of the Republic of Texas in 1839, for the erection and maintenance of an academy. This unfortunately was diverted to the common schools in each county, by a provision of the Constitution of 1876, which should be altered, so as to allow the donation by the State to counties to be devoted to its original purpose, which was wisely conceived, and fully as necessary to a complete system of education, fostered by the State, as common schools, or a university; both of which have adequate funds and means, in bonds, money and lands, if properly managed, without that being added. A neglect of that middle grade of education in our system will induce an impracticable effort on the part of the other two grades to supply its place, and will thereby impair the distinctive sphere that should be occupied by each. In the common schools there would be an effort to prepare persons for the university, which would be a higher standard of education than would be generally practicable, and in the university there would be a lowering of the standard for admittance, that would inevitably lower its character as a high school of learning. There should also now be a reservation of lands to supply the unorganized counties with four leagues each, before all of the public domain is taken up for other purposes. It would be well as far as practicable to locate this reservation for each county within its own limits.

#### THE AGRICULTURAL AND MECHANICAL COLLEGE

being, under the Constitution, a branch of the university, should be placed under the same supervisory control. I respectfully refer to the report of the board of directors, which will be submitted to you, for a full history in the past, and the present condition of that institution, with the recommendations in the message accompanying it. In addition to what is therein stated, I would submit that it will be found, since that institution is now, and should hereafter be devoted mainly to the special branches of learning in agriculture and the mechanic arts, as required by our Constitution, and as designed by its endowment, that the leading impediment to its success will be the want of scholars, in different parts of the State, so as to distribute the benefits of that sort of education over all parts of it. In this age of material development much attention should be given to this subject; especially in Texas, where agriculture, in a broad sense, must be for a long-time the leading pursuit; and it is to our interest to add to it, as fast as practicable, the benefits of the mechanic arts at home. I would recommend, therefore, that one-half a million of acres of the public lands be set apart and donated to that institution, as part of the university, for its encouragement, and especially to be used in supporting at said institution persons from different sections or districts of the State, so as certainly to procure scholars, and by that means spread skilled labor over the State.

#### THE NORMAL SCHOOLS

are a part of and especially necessary to perfect a complete and efficient system of free public schools. The Sam Houston Normal School at Huntsville was provided for by the Sixteenth Legislature, by the appropriation of fourteen thousand dollars out of the public free school fund, and by a donation from the Peabody educational fund through the agency of Dr. B. Sears, now deceased. In it has been supported at public expense seventy-four pupils last scholastic year, and ninety-three this year. I respectfully refer to the report of the Board of Education for information in regard to it. The Prairie



Vlew Normal School, (near Hempstead) for the education of colored teachers, was provided for by the Sixteenth Legislature, by an appropriation of six thousand dollars out of the interest of the university fund, because, it may be presumed, that had previously been connected with the Agricultural and Mechanical College, for the education of colored persons, but had failed for want of scholars.

In its present organization, under the law, it is strictly a normal school, and as such has been successfully carried on for the last two years, with thirty-five State pupils last scholastic year, and forty-six this year, at public expense. For the condition of this school I refer to the report of the Board of Directors of the Agricultural and Mechanical College. The marked success of both of these schools gives encouragement to increase the number of them, for which doubtless houses will be tendered to the State, for that purpose, as it was done by the citizens of Huntsville. To be prepared for this, and to give information to the Legislature on this subject by the aid of Mr. O. N. Hollingsworth, secretary of the Board of Education, I have made known to the trustees of the Peabody fund, the success of the institution already aided, and the great need of an increase in the number of such schools. The death of Dr. Sears, the general agent, has prevented any definite answer to the application soliciting additional aid, nor can it be expected until after the meeting of the board of trustees at Washington City, on the first Tuesday in February next. I have, however, been assured by a letter from the Hon. — Wintthrop, of Boston, President of said Board, that due consideration will be given to the application and that I would be justified in making my recommendations to the Legislature accordingly. Should there be two more of said schools provided for, I beg leave to suggest the propriety of naming one of them after Dr. B. Sears and the other after Mr. Peabody, as a just tribute of respect for those who have aided us in our efforts to build up a good system of public schools.

In regard to the appropriation for all of the normal schools, that are, or may be established, I would respectfully recommend that it be made directly out of the revenue and not out of the special funds, as it heretofore has been done. The propriety of taking them out of those funds, is extremely doubtful, from the wording of the Constitution in regard to said funds. And being schools, auxiliary to and necessary, as a part of the public free school system, the appropriation for them may be made with reference, to the amount of revenue set apart annually for the public free schools, and be so adjusted as never altogether to exceed the constitutional limit. And I again recommend that the amount of revenue to be devoted to the public free schools be specifically named by the Legislature, as it was done before the session of 1876, and that it will be specified and shown in the acts of the Legislature, so as to be easily accessible to and known by the whole country what amount of the general revenue has been given annually. The Legislature can form as accurate an estimate of the probable amount of revenue to be collected, as can the Board of Education, who have invariably had it to do before the assessment rolls for each year had reached the Comptroller's office. This too would be more conformable to the Constitution, which expressly says, that "there shall be set apart annually not more than one-fourth of the general revenue," etc. It is general revenue, not exceeding one-fourth of it, that is to be annually set apart. It should come into the State treasury as general revenue, and not as a school fund to be estimated annually by the Board of Education, which never has been done with anything like accuracy, and never can be, as any one will readily perceive, who will take the pains to examine and understand the subject in all of its details.

#### THE PUBLIC FREE SCHOOLS

have been taught upon an average over the State, about four months annually for the last five or six years. It was done last year with one-sixth of the general revenue added to the other sources of the available school fund, which was the interest on something over three millions of dollars in bonds, and the one dollar poll tax. It cannot for many years be kept up to the standard of four months annually, by those resources, and even one-fourth of the general revenue, for the reason, that the sources from which the available school fund for annual disposition to the schools, including that derived from taxes, are not, and have not, been increasing five per cent per annum, whereas the scholastic population has, for the last five years, been increasing ten per cent annually on the number of the preceding year. An elaborate and carefully prepared report of the operations of the schools, and all of the leading matters pertaining to them will be found in the report of the Board of Education, and in the statistical report connected with it, to which you are respectfully referred for full information.

It is very desirable to keep the schools up to the standard of four months in the year. The great body of the children of the scholastic age whose parents live in the rural districts of the country may not ordinarily be spared from home to go to school, longer than four months, and with good teachers, who had the proper educational spirit, and could inspire his scholars with it, that length of time

during six consecutive years, would be sufficient to give them a common English education, sufficient to fit them for the ordinary business avocations of life. That is all that this State or any other should attempt to accomplish, by means of taxing the people to do it. Those, who live in cities and in incorporated towns and whose children can generally be spared from home to go to school, longer than four months, may unite in assuming to control their own schools, and, by voting to tax themselves in aid of what is given by the State, may send their children to school as long as they may desire to do it. When our population becomes sufficiently dense, the counties may be laid off into rural school districts, and the same be done in them, as may now be done in our cities and towns, by a change in the Constitution, authorizing it to be done by said rural school districts. Indeed that is the way in which the most of the States carry on their schools, the great body of the funds for carrying them on being raised in the districts where the schools are taught, as will be fully shown in the report referred to.

I have not yet seen and examined the Comptroller's report by which to make estimates in regard to the probable receipts of general revenue during the next two years, but from my general information it is thought probable when it is examined as it should be before making estimates, that there will have to be an increase over one-sixth of the revenue to keep the schools up to the standard of four months, especially if the Legislature should diminish the taxes. It is certain, however, that the proportional increase of the scholastic population over the increase of the available school fund annually will necessitate to some means by which the present standard of the schools at least can be maintained.

The means for that purpose at our command, and the only means without in a very few years hence increasing the taxation beyond the constitutional limit, of one-fourth of the general revenue, will be by the more rapid sale of the school lands; by making better arrangements for facilitating their more rapid sale, and selling for a fair value in any quantities, to suit purchasers. The change made by the Sixteenth Legislature in the sale of three sections of land to one person without requiring the land to be settled on, instead as formerly one hundred and sixty acres with settlement required, caused there to be sold the first year over three hundred thousand acres of school lands, whereas for five years previously the annual average sales were not more than about eleven thousand acres. In the western portion of the State, where most of those lands are situated, persons who engage in farming, will for many years to come, depend partly on raising stock, and will require larger tracts of land even to make a livelihood than is required in other portions of the State. Said lands alternating with railroad lands, neither those, who own them, or the State can sell lands to establish colonies, or ranches, even farms with annexed stock lands to suit purchasers.

There have been numerous inquiries made, and many visitors to Texas, for the purpose of ascertaining how large tracts of pasture lands for stock and farming lands to found colonies in the west could be purchased, and it is reasonably certain, that many times more land could have been sold than was sold, if sales could have been made without the limitation of quantity that was imposed. The woodlands and those having valuable timbers should only be sold for money paid down and not on a credit, as otherwise the first payment may be made, the timber cut off, and the purchase be abandoned, leaving the land valueless. The great body of the lands might well be sold on long time with interest lower than ten per cent. as it is now.

To carry out these objects I respectfully recommend that an office be created to be filled by a bonded officer, to be styled "the State Land Agent" to be in the land office, where he can have free access to the records, who shall under a law defining his duties have charge of the sale, subject to the direction of or to rules prescribed by a board of executive officers, of which the Commissioner of the General Land Office shall be one, of the school lands, the different asylum lands, the university lands, the lands for the payment of the public debt, and of any other lands that may be appropriated to public uses under control of the State government.

Should this plan succeed to increase all of the funds belonging to those institutions, the taxes for their support might be proportionately diminished, and at the same time the State government might be placed in a situation to increase the annual term of its common schools, without burdening the people with onerous taxes, which will have to be done even to maintain them at the present standard, if those lands are not sold more rapidly. The more rapid sale of all of those lands would tend to the same result.

These lands being sold, and the funds increased by the purchase money being invested and drawing interest for annual use, the lands thereafter being taxed to raise revenue, and the public debt being diminished, and ultimately extinguished, and our country being settled more densely, so that provision can be made for the normal school districts taxing themselves, as the cities and towns can now, and good teachers, trained at our normal schools, being scattered

all over the country in the schools, then, and not until then can it be reasonably expected that our public free schools can be brought to a complete and efficient system, and sustained just as they are in the older and densely settled States, and then too all of our other educational interests will have been elevated so as to redound to the benefit of, and be the pride of our own people, and to compare favorably with similar institutions in other States of the Union.

That they may all be built up together in harmonious co-operation, I respectfully recommend, that they be put under the same supervisory control and government, by the creation of a Board of Education, embracing not only executive officers, but also distinguished citizens in different parts of the State with authority to form an acting directory, of which the Secretary of the Board, or Superintendent of Instruction, as he may be called, shall be a part, and be also an officer with a salary. This will require an amendment of the Constitution, which could be submitted to the people when the location of the university is submitted to them.

I desire to call attention to a few facts, that constitute an impediment to the success of our system of public free schools and prevent them from having the full sanction and encouragement of the whole community.

First. There are a large number of persons, who object on principle to public taxation to educate other people's children, as well as their own, if they have any. Now if we could raise an endowment fund of thirty or forty millions of dollars, by the sale of our school lands, surveyed and to be surveyed, amounting, as estimated at over forty millions of acres, and our taxes for school purposes be thereby diminished, and the great benefits to society, ensuing from our educational efforts, be exhibited and recognized, this objection would be greatly, if not entirely removed. And if by a more rapid sale of the lands, it can be seen in advance, that this is the object aimed at, and practically attainable, that itself will tend to prevent active opposition, long before the object itself is fully attained.

Second. The clause in our Constitution, which prevents any part of the public free school fund from ever being appropriated to, or being used "for the support of any sectarian school," causes objection to be raised in two ways, to-wit: that practically it is evaded by teaching forms of worship and precepts and particular religious tenets, on the one hand; and on the other hand, that it excludes any religious or moral training in the schools whatever. And hence there are a number of schools in the State, that do not receive any benefit from the public free school fund, and a number of persons, who will not send to the public schools, for one or the other of the reasons above mentioned, although they have to pay taxes to support them. This provision has been construed, from its literal import, to exclude schools, that are under the control of any denomination of organized religionists of whatever character, from receiving the benefit of this fund, because they are sectarian schools; that is the schools of a sect, notwithstanding they may not profess to teach in said schools the peculiar tenets of that sect. I think, and therefore submit, that the phraseology of that provision is unfortunate in not properly expressing what was most probably intended by it: which was to keep State and church separate, and not to ignore the necessity and importance of teaching any and all religion in the proper sense of that term, which embraces the duty and relation of man to man in society, and the duty and relation of man to his maker. Surely the precepts contained in the ten commandments, in the Lord's prayer, and in the Sermon on the Mount, taught in a school to pupils, could not be a matter of objection to any class of religionists elevated above the retaliatory and revengeful creed of a savage Indian, or an uncivilized barbarian. Reading them out of a particular book, or the practice in the school of any forms of worship, or the inculcation in any way the peculiar tenets of any creed whatever, are a very different thing. That is sectarianism and is not religion in its broad sense, common to civilized man, which ought to be taught for the benefit of the rising generation everywhere, and should be excluded from no place whatever. The amount of illegal violence, and other crimes, now prevalent in Texas, as well as elsewhere, shows, that there has been a great failure to properly teach it anywhere in this country. Had the provision been shaped, so that it could be construed to prohibit the particular tenets of any denomination of religionists, or the peculiarities of any religious creed of religion, from being inculcated, by any practice of forms of worship, or the teaching of them by precept, or otherwise—a more universal approbation of our school system might have been obtained, and a great want in education might have been supplied, so as to have suited all classes of our citizens. For it has been demonstrated, by long experience and observation, where the best systems of common schools have been established, that it requires something more than learning to read, write, and cipher, with geography, the English grammar, history, and other such things in mere scientific education added, to elevate a people to good citizenship, and true manhood. There must be inculcated a moral sentiment, by teaching the proper relations of man to man in society, and his

relation to his maker, in order to accomplish that object; and it should not be excluded from the schools, or any other place, by the operation of the law of the land. The religious part of the community feel, that their influence for good is ignored, and even repelled by this clause of the Constitution, and being fully impressed with that fact, by the numerous communications made to me, and to the Board of Education on this subject, during the last two years, I have deemed it my duty to present these views to the Legislature, for their consideration, and for such action if any therein, as may in their judgment be deemed for the public good. It involves a question, that is before us now, that is growing in importance, and must be met sooner or later.

On the subject of a university, I respectfully refer you to the memorial of a committee, appointed by the State Association of Teachers, addressed to me, and ask for it a respectful consideration, as coming from those, who from their occupation, have given attention and thought to the subject.

#### THE DEPARTMENT OF INSURANCE, STATISTICS AND HISTORY

will require your attention to make it accomplish the purposes for which it was intended. The laws in regard to insurance need a thorough revision and simplification, by placing them in one consistent and intelligible act. The elements or outlines of a contract, which is enforceable in the courts of this State, should be defined, and the whole of it should be required to be plainly printed or written, and the numerous conditions, and limitation most usually found in fine point should be prohibited, being apparently, from their form and verbiage, intended as a means of escape from paying damages and losses.

There should be required such reports to the commissioner, in regard to the ability of the companies, and of their transactions, together with such other means of security, as would make it certain, that they can be safely trusted in business. There is one thing connected with this business of insurance, incident to the struggle between amassed capital, and poverty by misfortune, that sometimes occurs in adjusting the losses or damages, which should be remedied, if it can be done justly. That is the case of a loss or damage by a poor man, doing business on a credit, who is not able to litigate with a wealthy company to obtain what is due him, and cannot afford to await the delays of the law, if he was certain of getting it, and therefore has to take whatever a company, whose sole object is to make all the money it can, will offer him. There should be a summary remedy provided, similar to that of assessing damage in taking land by a railroad company, or by arbitration legalized, so as to require that which is awarded to be promptly paid, and upon refusal to pay the same, the company should be suspended from doing business in this State. This is no fancy sketch of the strong oppressing the weak, as numerous instances, that have occurred in this State, will attest. Rich men seldom ever have much trouble on this subject. Again, there should be no legal insurance allowed on real estate in this State, in any and all companies, for more than two-thirds (or some such proportion) of the real value of the property insured, and then a total loss should be paid for the full amount of insurance as the law now provides. This will prevent speculative insurances, and also induce a man to carefully watch over the security of his own property. The loss of permanent property by carelessness is a loss of national wealth, that the money of insurance companies, if drawn out of them and paid to the insured, does not restore. The public, as well as the owner, is interested in its preservation. I most respectfully invite the attention of the Legislature to this whole subject of insurance in all of its branches which is of great, and growing importance to the people of this State.

In regard to the branches of history and statistics belonging to this department, I beg leave to suggest the propriety of the passage of a law enabling the Commissioner to have prepared a list of questions, relating to all the varied productions, and other objects of interest within the State, that should be made known, to be forwarded to the tax assessors of the several counties, and that it be made incumbent on them to procure answers thereto in making their assessments, and return them to said Commissioner, to be tabulated by him and published; and that said assessors be allowed a reasonable compensation therefor, commensurate with the services performed. It is also suggested that he may be allowed a contingent fund, to be used in defraying the expenses of procuring records, documents and other papers relating to the history of this State, and that he be allowed space in the building of the General Land Office, being a fire proof house, for storing valuable papers, and books belonging to his department, or entrusted to his care, so as to give assurance that they will not be lost. I recommend also that appropriation be made for the salary of a competent history and statistical clerk, who shall be put in charge of the State library, and devote himself especially to history and statistics, under the direction of the Commissioner, and that the Supreme Court library be turned over to the care of the clerk of the Supreme Court, with a reasonable compensation for taking care of it, as it was formerly



done, to be kept open and accessible to the bar and bench, at all suitable times for their benefit. I feel warranted in saying from my own knowledge, as well as upon information, that valuable papers, letters, and documents of various kinds, pertaining to the history of Texas, can be obtained for the benefit and use of the State, when sufficient efforts are intelligently made to do it, and (what is very important) assurance can be given, that they will be safely taken care of for future use, as they can be only in a fire-proof building. In this connection I respectfully refer to statistics, which I have collected on various subjects, which may be found of interest in shaping legislation, and which will be tabulated, and separately submitted for your examination.

## RAILROADS

are one of the necessities of this age. They have been built in Texas, and are now for the most part owned by persons out of the limits of the State, who have invested their capital in them for profit. They should be encouraged and be fully protected in all of their rights. The fact however is not to be overlooked in protecting the interests of the people, that the rule adopted by those in control of them, in fixing the transportation tax which they levy and collect on the production and consumption of the country, is measured and regulated by what each article of commerce to be transported will bear, and still permit it to be produced or consumed, so as to encourage its transportation by railroads. This tax may be ordinarily placed so high as to enable companies, by a mutual understanding for that purpose, to carry through-freights for long distances at a price that will give advantages to particular localities, by a charge for freight, below that charged from or to places not thus favored, which by the higher price charged helps to pay for the lower prices charged, from or to the favored places. Whenever that practice is seen to prevail, as it is well known it does in this State, it may be well concluded that the tax is levied with a margin above that which the transportation is worth from and to all places, and thereupon it should be regulated by law so as to produce equality of advantages to all places in the State alike. And even if upon examination there is no such margin upon an average of freights generally the unfavored localities should not be allowed to pay excessive charges to make up for the cheap freights to favored places.

Nor should it be allowed that one man at the same place shall ruin another, engaged in the same business, by favors extended of lower freights producing that result. So too in regard to passenger fares, the persons who pay their fares, pay enough to enable the companies to carry, free of charge, thousands of persons, showing that more is charged for those who pay than it can be afforded, if all were required to pay as they should be. This inequality in regard to localities and to persons, is producing a prejudice to the railroads, and an injury to the people that should not be tolerated upon the public highways of the State. Equality to all of the people of the State, enforced upon all of the public instrumentalities is the true rule of good government; and therefore I respectfully invite the attention of the Legislature to this subject for such regulation as may be deemed just and proper for all the parties concerned. I should not however omit to state that another effect that this partiality and combination to give cheap through freights to particular localities in the interior of the State is having the effect to divert the trade of the State, with all of the benefits of its profits from our own ports, which, from the nearer distance, and locality, are the natural outlets for it to the commercial world, and building up other places outside of the State, by the operations of our own railroads, in their combinations with other roads for cheap transportation to particular central localities in the interior of the State.

Other subjects connected with railroads deserve attention. It has been reported to me, unofficially of course, that there have been, and are now roads allowed to be so defective, as to render travel on them very dangerous; and also, that at particular places, connections are not made, by which persons traveling on them are delayed. In the latter case, the Governor is authorized to require, that proper connections should be made to accommodate travel, and upon default of complying with his requirements, he may appoint an engineer to take possession of the road, and have it run for the State until assurance is given, that compliance will be made. To enable these provisions to be carried out, and to have the Governor officially informed of the necessity for interference, I respectfully recommend that the office of State engineer be created, with power to the officer filling it defined by law, authorizing him to inspect railroads and have corrected any abuses or irregularities, prejudicial to the public interests, that may occur in their operations, and further, that a contingent appropriation be made, sufficient to enable the Governor to take possession of a road, and run it for the State, through an agent appointed for that purpose, when it may become his duty to do so, in order to defray expenses until the profits of the road shall have reimbursed the amount of the appropriation, that may be expended in taking control of the road, under and in pursuance of the law. (See article 4255 of Revised Civil Statutes.)

I respectfully recommend, that action be taken to amend the Constitution, so as to exempt from taxation, for ten years machinery and other property actually engaged in manufactures of cotton, wool, and other home products, in the development of our water power, and in mining coal, iron, copper, and other metals, in this State. The principle, upon which this recommendation is made, is, that, without some inducement offered, these industries will not be introduced, or otherwise be put in operation to any considerable extent, and if they should be introduced, or put in operation in that time, it will be that much gain to the taxable property at the end of it, besides increasing the wealth of the State incidentally from the time they may be introduced, or put in operation.

And as auxiliary to this, if it should be undertaken, I respectfully recommend, that provision be made for a recognisance of the State to ascertain and exhibit the mineral, agricultural and other material resources of the State, and to collect, combine and publish the geological researches, that have been made at public expense, so far as they can be found, and constitute valuable information, as guides to material enterprises. I have reliable information that they can be found, and collected, at no great expense.

The facts and views here presented with those contained in previous messages and in the several reports that have been, and shortly will be presented, will, it is hoped, give to the Legislature some aid, in the effort to improve the operations of the State government, by the adoption of such measures, as, in the combined judgment of its members, will best protect the rights, and advance the varied interests of the people of Texas, whom they represent.

Respectfully submitted,

O. M. ROBERTS, Governor.

Senator Gooch introduced a bill entitled "An act regulating the burden of proof in suits for land sold and conveyed by the survivor of a community, in whose name the title of record to the land stands at the date of sale and conveyance." Referred to Judiciary Committee No. 1

Senator Lane introduced a bill entitled "An act to amend article 1052, chapter 2, title 15, of the Code of Criminal Procedure." Referred to Judiciary Committee No. 2.

Senator Swain offered a joint resolution proposing an amendment to the Constitution of the State of Texas. Referred to the Committee on Constitutional Amendments.

Senate bill No. 16, entitled "An act to amend article 4205, chapter 9, title 84 of the Revised Civil Statutes of the State of Texas, adopted February 1, 1879," was taken up, amendment of Senator Lane pending.

Senator Lane moved to postpone until next Tuesday, and make the special order after the morning call. Adopted.

On motion of Senator Houston, Senate went into executive session.

## IN SENATE.

On motion of Senator Patton the secretary was instructed to inform the Governor that the Senate has advised and consented to the appointment of I. W. Middlebrooke as assistant superintendent of the penitentiary, and that the same be entered on the journal.

Senate bill No. 40 entitled "An act to amend article 605 of an act entitled 'an act to adopt and establish a Penal Code and Code of Criminal Procedure for the State of Texas,' passed by the Sixteenth Legislature," was taken up as unfinished business. Read second time and adverse report of committee adopted, and bill lost by the following vote:

## YEAS—17

Buchanan of Grimes	Henderson,	Shannon.
Burges,	Homan,	Stewart,
Cooper.	Moore,	Stubbs,
Davenport,	Patton,	Weathered,
Gooch,	Powers,	Wynne.
Harris,	Rainey,	

## NAYS—10.

Buchanan of Wood,	Lair,	Ross,
Burton.	Lightfoot,	Swain,
Hightower,	Martin of Cooke,	Tilson.
Houston,		

## NOT VOTING—1.

Lane

Senate bill No. 23, entitled "An act to amend article 2266,

chapter 4, title 38 of an act entitled 'an act to adopt and establish the Revised Civil Statutes of the State of Texas,' passed by the Sixteenth Legislature of the State of Texas," was taken up as business on the President's table. Read the third time and passed.

Senate bill No. 42, entitled "An act limiting the employment of sailors and crews of foreign vessels in the ports of this State," was taken up and read second time.

On motion of Senator Stubbs the bill was re-committed to the Committee on Commerce and Manufactures, where a House bill on the same subject is under consideration.

Senate bill No. 46, entitled "An act to amend article 1289, chapter 2, title 29, of the Revised Civil Statutes of the State of Texas," was taken up, read second time and ordered engrossed.

(President pro tem. in the chair.)

Senator Martin, of Cooke, moved that the reading of the Governor's message be omitted, and that five hundred extra copies of the journal containing it be printed. Adopted.

Senate bill No. 48, entitled "An act to amend article 1265 chapter 8, title 29, of the Revised Civil Statutes of the State of Texas, passed February 21, 1879," was taken up, read second time and ordered engrossed.

Senate bill No. 49, entitled "An act to amend chapter 10, title 72 of the Revised Civil Statutes of the State of Texas, by adding article 3609a, providing for the surrender of county convicts by the hirer, in certain cases," was taken up, read second time, and on motion of Senator Henderson, further consideration of the bill was postponed till to-morrow.

Senate bill No. 57 entitled "An act to amend title 11, chapter 1, article 241 of the Revised Civil Statutes of the State of Texas, adopted February 21, 1879," was taken up, read second time, committee amendment adopted and bill ordered engrossed.

Senate joint resolution No. 9, amending article 7 of the Constitution of the State of Texas, relating to education and the public free schools, with adverse report of the committee was taken up, report adopted and resolution lost.

(President in the chair)

Senate bill No. 13, entitled "An act to regulating the taking of testimony by grand juries in respect to criminal accusations of the grade of felony," was taken up.

On motion of Senator Gooch, further consideration of the bill was postponed until to-morrow.

On motion of Senator Homan, 100 copies of the bill and reports were ordered printed.

Senate joint resolution No. 15 proposing an amendment to section 1, article 6 of the Constitution of the State of Texas relating to suffrage, was taken up, read second time, adverse committee report adopted and bill lost.

Senator Gooch, chairman of the Committee on Public Debt submitted the following report:

COMMITTEE ROOM,  
AUSTIN, JANUARY 27, 1881.

Hon. L. J. Storey, President of the Senate:

Your Committee on public debt have had under consideration Senate bill No. 71, entitled "An act to provide for the payment of all outstanding ten per cent interest treasury warrants of the State of Texas, which were issued in payment for services rendered prior to January 28, 1861," and instruct me to report favorably upon the same, and recommend that it do pass. We think the following explanation of the objects of the bill should be given: There exist certain State treasury warrants, aggregating several thousand dollars in amount, which were issued after January 28, A. D. 1861, for services rendered prior to that date. They are valid claims, and bear interest at the rate of ten per cent per annum. Provision was intended to be made for their payment by act of July 6, 1876, but the language used in identifying them, described them as "warrants issued prior to January 28, 1861," when they should have been described as "warrants issued for services rendered prior to January 28, 1861." In consequence of this mistake in description, the Treasurer has very properly refused to pay them. The appropria-

tion is not exhausted by about seven thousand dollars. The bill accompanying this report makes it the duty of the Treasurer to pay these claims out of the appropriation heretofore made for the purpose, and does not make another appropriation. The long neglect of these claims, as well as the high rate of interest which they bear, in our judgment, suggests the propriety of early action on this subject.

Gooch, Chairman.

Bill read first time.

On motion of Senator Lair rules were suspended, and bill placed upon its second reading, by the following vote:

YEAS—28.

Buchanan of Grimes	Homan,	Rainey,
Buchanan of Wood,	Houston,	Ross,
Burges,	Lair,	Shannon,
Burton,	Lane,	Stewart,
Cooper,	Lightfoot,	Stubbs,
Davenport,	Martin of Cooke,	Swain,
Gooch,	Moore,	Tilson,
Harris,	Patton,	Weatherred,
Henderson,	Powers,	Wynne.
Hightower,		

NAYS—none.

Senator Gooch offered the following amendment:

Add to the last section:

"The fact that the warrants herein mentioned bear a very high rate of interest, as well as the fact that the payment has been long deferred, justifies the suspension of the rule requiring this bill to be read on three several days, and the rule is suspended." Adopted, and bill ordered engrossed.

On motion of Senator Martin of Cooke, the rules were further suspended, and bill put upon its third reading, by the following vote:

YEAS—27.

Buchanan of Grimes	Hightower,	Rainey,
Buchanan of Wood,	Homan,	Ross,
Burges,	Lair,	Shannon,
Burton,	Lane,	Stewart,
Cooper,	Lightfoot,	Stubbs,
Davenport,	Martin of Cooke,	Swain,
Gooch,	Moore,	Tilson,
Harris,	Patton,	Weatherred,
Henderson,	Powers,	Wynne.

NAYS—none.

NOT VOTING—1.

Houston,

Bill read third time and passed by the following vote:

YEAS—27.

Buchanan of Grimes	Hightower,	Rainey,
Buchanan of Wood,	Homan,	Ross,
Burges,	Lair,	Shannon,
Burton,	Lane,	Stewart,
Cooper,	Lightfoot,	Stubbs,
Davenport,	Martin of Cooke,	Swain,
Gooch,	Moore,	Tilson,
Harris,	Patton,	Weatherred,
Henderson,	Powers,	Wynne.

NAYS—none.

NOT VOTING—1.

Houston.

Senator Martin of Cooke, chairman of Committee on Printing, submitted the following report:

COMMITTEE ROOM,  
AUSTIN, JANUARY 27, 1881.

Hon. L. J. Storey, President of the Senate:

Your Committee on Printing, to whom was referred the resolution instructing them to inquire into the expediency of employing stenographic reporters to take down the proceedings of the Senate in full, for publication in the journal, have duly considered the same, and instruct me to report that the expense of providing such a report of proceedings as is contemplated by the resolution, would be greater than, in their opinion, the Senate should incur for that purpose.

Martin of Cooke, Chairman.

Report adopted, and resolution lost.

The following message was received from his Excellency the Governor:



EXECUTIVE OFFICE, STATE OF TEXAS,  
AUSTIN, January 27, 1881.

To the Honorable Senate and House of Representatives, in the Legislature assembled:

I respectfully submit the annexed memorial of the citizens of Harrison county delivered to me to be presented to the Legislature, requesting a change in the time of holding the State elections, and assigning their reasons therefor, arising out of the prosecutions of their fellow-citizens in the federal court, and also a suit pending in said court, instituting a contest for the office of district judge of the fifth judicial district in this State.

I recommend that a favorable consideration be given to this memorial, and that the object designed by it be carried out by such enactments as the Legislature may deem proper.

In addition to the facts stated in this memorial, I beg leave to state that at the general election in Smith county in November, 1878, a similar occurrence happened to that mentioned in regard to the prosecutions in the Federal courts. The county judge of Smith county was arrested under a prosecution instituted in said court, for not counting the votes of a voting place in said county, on account of the defect or illegality of the returns of said election, according to his construction of the law in regard thereto, and said judge, Benjamin Bass, was compelled to give bail, in the sum of two thousand dollars to relieve himself from imprisonment under said arrest. To show that said prosecution was instituted to affect something in regard to the election of State, and not Federal officers, it is only necessary to state that the Hon. John H. Reagan was elected a member of Congress without opposition at said election, and that therefore it was wholly immaterial, whether or not any of the votes of Smith county were received and counted by said judge, in regard to his election.

That circumstance, with others of which I was informed, induced me to recommend to the Sixteenth Legislature to change the time of holding the general elections of State, district, and county officers. I did so for two reasons, first, that I have no reason to believe that there is any general disposition on the part of the citizens of this State, to interfere with the free suffrage of any persons having a right to vote, nor to control the result of elections on the part of officers acting illegally or fraudulently in counting the votes, legally polled. And if an occasional instance should occur, there was an ample remedy in our own courts for correcting the evil, as was illustrated by a contest before the district judge in the very case I have referred to. I cannot admit, nor do I believe, that our own State courts cannot be trusted to protect the right of suffrage fully, and the right to an office on the contest, and therefore there is no necessity or propriety in allowing the opportunity to have our officers and citizens prosecuted in a court at a great distance from their residence, and be subject almost necessarily to great expense in making their defense, in a Federal court.

As to the trial of a contest for a State office, such as that of district judge, by a suit or proceeding instituted in the Federal court, as mentioned in this memorial, I should hardly suppose that any judge would decide that said court had the constitutional jurisdiction to hear and determine it in that court. But if such a suit should be entertained, or there is any reasonable ground for believing that one of our citizens would be subjected to the expense and trouble of defending, by a regular trial, such a suit in that court, then I would recommend, that a law be passed not allowing any judge of a State court to draw a salary, who held his office by virtue of a judgment of the Federal court. If the Legislature should deem it proper to take any such action, as here indicated upon a thorough examination of the subject, it may be found, that they will have to go further, and provide against a mandamus being issued against the Comptroller of the State to compel him to issue a warrant for the salary, which might be done by enacting a law that no such compulsory writ should issue against any State executive officer, which I recommend to be passed at all events. Such writ has been issued, as well as that of injunction, against the heads of executive departments in this State to control them in the discharge of their official duties, and sanctioned by a decision of the Supreme Court of the United States, upon the ground, that it was in accordance with the law of this State, which conclusion such a statute would expressly negative, and put an end to, which is believed to be a most desirable object, as our future experience will be certain to demonstrate, if it is not done.

Should the Legislature change the time of holding the general election for State officers to another day than that on which it is now held, I recommend that provision also be made for all of the State executive officers to go out of office at the time fixed for the inauguration of the Governor, so as to have uniformity on that subject, in the different executive departments of the government.

Respectfully submitted,

O. M. ROBERTS, Governor.

To the Honorable the Senate and House of Representatives of the State of Texas:

We, the undersigned, citizens of Harrison county in the State of Texas, beg leave to present the following memorial to your honorable bodies, and urge upon you the facts which it contains, and say: That at the late general election, held in November last, the returns of our county showed that the candidates upon what was known as the "citizens' ticket," except for the offices of county surveyor and constable in precinct No. 2, received a large majority of the votes cast at said election. Said citizens' ticket was put before the people by a party called the "citizens' party," which was made up of the intelligent masses in our county, without regard to race, color, previous condition, or former political affiliation, and was organized solely for the purpose of securing an honest, good local government in Harrison county. Upon the citizens' ticket was placed the name of the Democratic candidate for district judge of the Second Judicial District, and the majority for him was about the same as other candidates upon the ticket. As soon as the result was ascertained the independent Democratic candidate for judge of this district, who was defeated, instituted his suit in the United States Court at Jefferson, Texas, for the office, against Hon. A. J. Booty, who was elected by a majority of nearly 3000, and immediately thereafter, or about the same time, the defeated candidates for the county offices of judge, sheriff and assessor of taxes, began a contest in the same court to try their right to said offices. Some of our most reputable citizens have been indicted by the late Federal grand jury at Galveston for intimidating colored voters at said election. The most contemptible and disgraceful means were used by certain deputy United States marshals and United States commissioners to secure these indictments, among which was the shameful process of intimidating ignorant negroes with disastrous results that would follow to them if the Democrats should retain the offices.

We further say that large numbers of the colored people in this county joined the "citizens party," and worked zealously and faithfully to secure the success of the party, and that since the election the few white scoundrels, nearly every one of whom is either a deputy United States marshal or commissioner, have practiced toward these people a systematic course of intimidation to frighten them away from attendance upon the trials where they are expected to give evidence in behalf of our citizens. Some twenty of our citizens are now under bond to answer offenses against United States laws for interfering with the freedom of election. The sole and only pretext upon which the jurisdiction of the Federal court to try these persons is based is that the election was a general one at which members of Congress were voted for.

Two years ago in the United States Court at Jefferson four of our citizens were arrested and prosecuted for refusing colored voters the right to vote, the facts being that a challenge was made to a ticket on account of its color, and the judges suspended the voting of colored tickets until they could examine the law. Both parties were voting colored tickets, and, after an examination of the law, the judges overruled the challenge; yet for this they were arrested, imprisoned, and prosecuted; and, although acquitted, the enormous expense of the court came near ruining the parties. The expense of the trial now pending will be very great—not less than \$10,000—as the nature of the prosecutions will require numerous witnesses on both sides.

These prosecutions and contests, although without foundation, will be continued so long as our State and Federal elections are held on the same day; and we therefore respectfully request that the time of holding State elections be changed to a day different from the day for holding Federal elections.

W. P. Lane,	W. M. Robertson,	M. Armstrong,
O. Hendick,	W. J. Roseborough,	W. N. Daconer,
James Turner,	G. M. Phillips,	W. T. Scott, Jr.,
F. B. Sexton,	Joe Lahl,	M. R. Andrews,
William Stedman,	J. D. Adair,	C. K. Andrews,
W. H. Pope,	J. A. Pope,	R. T. Hailoy,
J. T. Pierce,	H. Tevis,	T. S. Buchanan,
N. A. Stedman,	W. J. Sloan,	B. R. Bass,
A. Pope,	W. W. Nesbitt,	Peter Bass,
A. R. Starr,	T. W. Winston,	A. B. Longworth,
W. D. McFarlin,	W. E. Winston,	C. A. Ginochio,
M. R. Geer,	J. M. Estes,	Tom A. Elgin,
J. P. Alfred,	J. H. Turner,	T. G. Twyman,
J. D. Rudd,	R. H. Motley,	E. J. Fry,
A. S. Field,	W. D. Pannell,	Edmund Koy,
S. R. Perry,	W. C. Austin,	D. McKay,
R. C. Garrett,	O. Knox,	John Coch.
W. M. Johnston,	W. R. Harris,	

EXECUTIVE OFFICE, STATE OF TEXAS,  
AUSTIN, January 27, 1881.

To the Honorable Senate and House of Representatives, in the Legislature assembled:

I herewith respectfully submit a memorial delivered to me to be

presented to the Legislature, in regard to an amendment of the laws relating to estrays.

There was such a law many years ago in Texas, which as I now recollect, worked well in enabling persons to find their lost property. Why it was repealed, I have no knowledge.

Respectfully submitted,

O. M. ROBERTS, Governor.

To the Members of the Seventeenth Legislature:

We, the subscribers citizens of the State of Texas, being convinced by long experience of the inefficiency of the present working of the stray law, respectfully petition your honorable bodies to have the law so amended that instead of having the notice published in the local papers that it be published at the capital in a book or pamphlet, and a copy or copies to be sent the clerk of each county in the State once in each month, to be kept or held by him for general inspection, free for all parties.

S. E. Cunningham, G. W. Rassor, A. Conner, W. W. Rason, farmers of Gonzales county; J. C. Fry, J. S. Goss, N. H. Egleson, A. C. Taylor, B. G. Bourd, N. Trammell, farmers; B. F. Minter, farmer and stockman; Obe Christian, C. McHaney, W. H. Young, farmers; A. T. Bass, tax collector and farmer, of Gonzales county; A. L. Anderson, L. M. Kopenut, stockman; M. M. Fitzgerl, Robert Botts, A. W. Church, W. L. Clark, farmer; R. T. Taylor, W. S. Bunlon, W. H. Pitman, J. A. Martin, John Stulting, J. A. Roaley, P. W. Ploom, farmers; D. McArthur, G. M. Walker, stock and farm; I. P. Peisecley, S. G. Huller, R. N. Bostil, S. H. Edridght, W. H. Russell, J. S. Tate, J. W. Copeton, J. H. Henson, constable and deputy sheriff; J. E. Hargis, farmer; W. A. Blain, J. T. Bissit, Y. E. Stinson, J. T. Finny, T. A. Mathews, J. W. Kopernot, stock and farmer; R. H. Carson, E. W. Perryman, A. Christian, farmer; J. N. Call, Robert Neal, H. W. Monroe, J. F. Hellse, W. H. Brady, S. C. Askey, stockman; R. C. Pullum, J. W. Bartle, J. Wm. Clylayser, deputy sheriff; H. M. Zranch, mayor of Gonzales; John C. Jones, S. T. Winston, lawyer; W. M. Atkinson, county attorney; E. H. Spalding, J. N. Sneed, W. D. Smith, aged 91 years, and was a soldier in the war of 1812; J. S. Stricklin, T. E. Tufts, J. T. Lagore, N. V. Hulli, J. A. Shashie, W. J. Call, Y. M. Call, J. Martin, B. C. Benson, O. M. Christian, Stilman Bashu.

On motion of Senator Patton the memorial was referred to the Committee on Stock and Stockraising.

EXECUTIVE OFFICE,  
AUSTIN, January 27, 1881.

To the Honorable the Senate and House of Representatives in the Legislature assembled:

I herewith transmit to your honorable bodies the whole of the report of the Board of Education, except the statistical tables relating to the different counties, published in the Journal of Education, which its editor, Mr. O. N. Hollingsworth, has kindly furnished for the use of the members of each house, in advance of the official report, which has been delayed on account of the very large amount of printing necessary to be done. I send this communication simply to give assurance of the reliability of the information contained in it as being the same as will be found in the official report, when it is presented, with the exception stated.

Respectfully submitted,

O. M. ROBERTS, Governor.

On motion of Senator Martin of Cooke, the accompanying reports were referred to the Committee on Education.

A message was received from the House, announcing the passage by that body, of House Bill No. 46, entitled "An act to amend section 1, of an act to diminish the civil and criminal jurisdiction of the county courts of certain counties in this State, and conform the jurisdiction of the district courts of said counties to such change," approved March 27, A. D. 1879."

On motion of Senator Gooch, said bill was referred to the Committee on State Affairs.

Senator Patton offered a joint resolution, "Proposing an amendment to section 23, of article 16, of the Constitution of the State of Texas, by substituting another section." Referred to the Committee on Constitutional Amendments.

Senator Stewart, chairman of Judiciary Committee No. 2, submitted the following report:

COMMITTEE ROOM,  
AUSTIN, January 27, 1881.

Hon. L. J. Storey, President of the Senate:

Your Judiciary Committee No. 2, beg leave to report that they have duly considered Senate Bill No. 18, entitled "An act regulating juries in capital cases," and I am instructed to report said bill back

to the Senate with the recommendation that it do pass, and to ask of the Senate that one hundred copies of the bill be printed.

STEWART, Chairman.

Senator Buchanan of Grimes, of said committee, submitted the following minority report on said bill:

#### MINORITY REPORT.

COMMITTEE ROOM,  
AUSTIN, January 27, 1881.

Hon. L. J. Storey, President of the Senate:

The undersigned, a member of Judiciary Committee No. 2, to whom was referred Senate bill No. 18, entitled "An act regulating juries in capital cases," respectfully dissents from the report made by a majority of said committee recommending the passage of said bill for the following reasons:

First—The bill in effect gives to the defendant or defendants to be tried under its provisions at least thirty days more of time than is by law now allowed, to use his or their influence upon the jurors constituting the venire.

Second—The bill requires all capital cases to be tried by the same venire. In counties where several murder cases may be pending, and the term of the court continuing six or more weeks, some of the defendants at least would have more than two months in which to influence or to learn the opinion of many, if not all, the jurors constituting the venire.

Third—In counties like those mentioned above the bill imposes severe labor and unnecessary hardship upon the jurors constituting the venire, in that it requires of them a continuous attendance upon the court for probably the whole time thereof.

Wherefore it is respectfully recommended that said bill do not pass.

BUCHANAN of Grimes,  
Member of said committee, in the minority.

Bill read first time, and one hundred copies of the bill and reports ordered printed.

On motion of Senator Lane, Senators Weathered and Cooper were added to the Committee on Finance.

Senate joint resolution No. 20, amending section 3, article 7, of the Constitution of the State of Texas, authorizing the Legislature to levy an ad valorem tax on all property in the State in an amount not to exceed twenty-five cents on the one one hundred dollars, for the benefit of the public free schools," was taken up and read second time.

Senator Stewart offered the following amendment: Amend by striking out section 3, and in lieu thereof insert:

Section 3. There shall be levied annually an ad valorem tax on all property in this State of twelve and one-half cents on the one hundred dollars, and a poll tax of one dollar on all male inhabitants in this State between the age of twenty-one and sixty years, for the benefit of public free schools.

On motion of Senator Gooch the bill was postponed until to-morrow.

On motion of Senator Rainey, the Senate adjourned until 10 o'clock to-morrow morning.

#### SIXTEENTH DAY.

SENATE CHAMBER,  
AUSTIN, January 28, 1881. }

Senate met pursuant to adjournment; the President in the chair.

Roll called—quorum present.

Prayer by the Chaplain.

On motion of Senator Rainey the reading of the journals of yesterday was dispensed with, and the same adopted.

Senator Stubbs, chairman of the Committee on Commerce and Manufactures, submitted the following report:

COMMITTEE ROOM,  
AUSTIN, January 27, 1881.

Hon. L. J. Storey, President of the Senate:

Your Committee on Commerce and Manufactures, to whom was referred House bill No. 7, entitled, "An act to restrict the employment of sailors and crews of foreign vessels from rolling cotton, handling cargo, or laboring on the wharves or levees of ports in the State of Texas, beyond the end of the ship's tackle," have had the same under consideration, and I am instructed by a majority of the